

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 16111 of 2004

Between:

M/s Sri Nataraj Enterprises Granites, rep. by its Managing Partner
Sri Gadde Babu Rao S/o Late Venkataratnam, 64 years, R/o Cheepurupalli,
Vizianagaram District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep. by its Secretary, Industries &

Commerce Department, Secretariat, Hyderabad.

2 The Director, Mines & Geology, BRKR Buildings, 8th Floor, Tank Bund
Road, Hyderabad.

3 The Assistant Director of Mines & Geology, Tekkali, Srikakulam District.

4 M/s M.S.P. Granites, rep. by its Prop.M.S. Palanivelu S/o Sabapathy,
R/o H.No. 1-342, Rotary Nagar, Tekkali, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the proceedings No. 9109/R1(3)/2003 dated 3-9-2004 issued by the 2nd respondent herein as illegal, arbitrary and unjust and consequently direct the respondent No.2 herein to consider the application dated 31-3-2003 of the petitioner herein for grant of quarry lease in respect of Survey No.1 of Addukonda Village , Tekkali Mandal, Srikakulam District by issuing appropriate Writ , order or orders.

Counsel for the Petitioner: MR.M.V.S.SURESH KUMAR

Counsel for the Respondent Nos.1 to 3: GP FOR MINES AND GEOLOGY

Counsel for the Respondent No.4 : Smt.N.SHOBHA

And

WRIT PETITION NO : 16184 of 2004

Between:

1 M/s.Sri Venkateswara & Nataraj Granites, rep., by its Managing Partner Sri

Gadde Babu Rao, s/o late Venkataratnam, aged about 64 years, r/o

Cheepurpalli, Vizianagaram District.

2 M/s.Sri Nataraj Enterprises Granites, rep., by its Managing Partner Sri Gadde

Babu Rao, s/o late Venkataratnam, r/o Cheepurpalli Vizianagaram District.

..... PETITIONERS

AND

1 The Government of Andhra Pradesh, represented by its Secretary,
Industries & Commerce Department, Secretariat, Hyderabad.

2 The Director, Mines & Geology,
BRKR Buildings, 8th Floor, Tank Bund Road,
Hyderabad.

3 The Assistant Director of Mines & Geology, Tekkali, Srikakulam District.

4 M/s.M.S.P.Granites, rep., by its Prop.M.S.Palanivelu, s/o Sabapathy,
r/o H.No.1-342, Rotary Nagar, Tekkali, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the proceedings No.38910/R1 (3)/2001, dated 03-09-2004 issued by the 2nd respondent herein as illegal, arbitrary and unjust and consequently direct the respondent No.2 herein to consider the applications dated 10-03-2003 and 28-03-2003 of the petitioners herein for grant of quarry lease in respect of Survey No.71 of Lingalavalasa Village, Tekkali Mandal, Srikakulam District by issuing appropriate writ of mandamus order or orders,

Counsel for the Petitioner: MR.M.V.S.SURESH KUMAR

Counsel for the Respondent Nos.1 to 3: GP FOR MINES AND GEOLOGY

Counsel for the Respondent No.4 : Smt.N.SHOBHA

The Court made the following :

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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Writ Petition Nos.16111 and 16184 of 2004

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Common Order:

Heard Sri M.V.S.Suresh Kumar the learned Counsel appearing for the petitioners and Smt.N.Shobha, the learned Counsel appearing for the contesting respondent No.4 and the Government Pleader for Industries. Since the proceedings challenged are similar in both these Writ Petitions, they are taken up together for disposal.

2. Though the matter has come up on application filed for vacating interim stay granted by this Court, the main writ petitions are themselves taken up at the request of the counsel on either side.

3. In these two proceedings, the petitioners seek the writ of Mandamus to declare the impugned proceedings dated 03-09-2004 issued by the 2nd respondent herein in granting the lease in favour of the 4th respondent, as illegal and seek further direction for consideration of applications filed by them for the grant of said lease in respect of Sy.No.1 of Addukonda village, Tekkali Mandal, Srikakulam District and Sy.No.71 of Lingalavalasa Village, Tekkali Mandal, Srikakulam District, respectively in their favour.

4. The brief facts, which are necessary for the purpose of disposal of these two writ petitions, are that the petitioner in W.P.No.16111 of 2004 is applicant for grant of quarry lease, who filed his application on 31-03-2003, whereas the petitioners 1 and 2 in W.P.No.16184 of 2004 are the applicants, who filed their applications for grant

of self same lease as per the applications dated 10-03-2004 and 28-03-2003 respectively. Admittedly, the contesting respondent No.4 herein has filed his application for the grant of lease in the said land on 11-09-2002. The case of the petitioners is that the respondent No.4 has made encroachments and carried on illegal mining, whereby proceedings have been initiated by the concerned authorities by issuance of notice on 19-04-2003 and calling upon him to pay the seigniorage fee and also the penalties. However, the respondent No.4 filed an appeal before the appellate authority i.e., respondent No.1 herein, as against the said demand and the same is pending. Since despatch permits were not been granted, the respondent No.4 filed a W.P.No.7907 of 2003, wherein certain directions have been given on 13-06-2003 in W.P.M.P.No.10296 of 2003 for issuance of despatch permits, subject to certain conditions. On appeal, at the instance of the respondent Nos.1 to 3 herein, the Division Bench as per the orders in W.A.No.1270 of 2003 dated 05-08-2003 has confirmed the said direction for issuance of despatch permit, however, with some modification in regard to payment of seigniorage fee. It is their case that having regard to such default committed and the appeal filed by the respondent No.4 is disqualified, 4th respondent is not entitled to lease. In spite of the same, the respondent No.1 has passed the impugned orders granting the lease in its favour, even though, combined proposal has been made by the respondent No.2 to the respondent No.1. The main submission making a challenge to the impugned proceedings is that respondent No.1 is a competent authority for grant of lease and therefore he has to exercise his powers independently uninfluenced from any quarters. The impugned orders dated 03-09-2004 disclose that the respondent No.1 had issued the directions for grant of quarry lease for colour granite in favour of the respondent No.4, though subject to outcome of Court case and revisions pending. Therefore, entire impugned orders are totally vitiated and it is only in strict obedience of the said directions the lease has been granted. In support, the learned Counsel for the petitioners sought to place reliance on the decision reported in STATE OF PUNJAB v. HARI KISHAN and SONA EXPORTS vs. DIRECTOR OF MINES. It was further pointed out on behalf of the petitioners that the respondent No.4 before grant of the said lease has not obtained the mineral revenue clearance certificate, which is mandatory as per the rules.

5. Smt.N.Shobha, the learned Counsel appearing for the contesting respondent No.4, submitted that having regard to the fact that as against the demand the appeal

and revisions are pending, wherein interim directions have been granted and therefore even as per the rules, it would not constitute any disqualification, nor disentitles the grant of lease. Further, the respondent No.2 has in fact submitted a combined proposal only in view of the fact that the petitioner is a politically influential person at the relevant point of time and it is only due to the said pressure, the matter has been hurried up and only at his instance the said proposals were sent. Therefore, the petitioner cannot make grievance against the impugned action granting the lease in favour of the respondent No.4. Further, ultimately the application of the respondent No.4 being anterior to that of the writ petitioners herein, the writ petitioners have no locus to make any challenge in this regard.

6. Considering the submissions made and on perusal of the material, the only question, which comes up for consideration in these two writ petitions is, whether grant of lease in favour of the respondent No.4 under impugned orders is vitiated by any reasons, as pointed out on behalf of the petitioners. There is no dispute to the fact that the application of the respondent No.4 is admittedly anterior, which was filed on 11-09-2002, whereas the applications filed by the petitioners are on 10-03-2003, 28-03-2003 and 31-03-2003. There is also no dispute to the fact that there has been certain demands, as against the respondent No.4 on the allegations of illegal quarrying of mine by encroachment and against which a regular appeal is pending. That apart, writ petition is also pending in W.P.No.7907 of 2003 in this Court, wherein in the proceedings arise out of interlocutory application, the Division Bench of this Court has granted directions for issuance of permits, subject to certain conditions. On the applications filed by the respective parties, the 2nd respondent has sent a proposal on 31-07-2004 for seeking clarification from the respondent No.1, as to which of the applicant would be entitled to the lease. Under provisos to Rule 12 (5) (b) of the A.P. Minor Mineral Concession Rules, 1966, the earliest application filed has to receive preference. On this ground there is no dispute that the respondent No.4 is entitled to the lease. However, the submissions made on behalf of the petitioners are that having regard to the disqualification, as contemplated under provisos to Rule 12 (5) (d) of the said Rules, the respondent No.4 has to file mineral revenue clearance certificate, without which the lease should not have been granted.

7. It is the case of the respondent No.4 that in fact the mineral revenue clearance certificate has already been filed at the relevant period and therefore there is no disqualification. Even otherwise, having regard to the pendency of the appeal, revisions and also the writ petition, wherein the directions have been given, it is not come against the consideration of the application for grant of lease.

8. Coming to the main submission made on behalf of the petitioners that the impugned order itself refers to the fact that Government has directed the 2nd respondent to grant quarry lease in favour of the respondent No.4 and therefore it would not amount to any independent exercise of powers, nor amounts to independent decision on its own and therefore the same is vitiated. The petitioner submits that in STATE OF PUNJAB'S case (1 supra), while considering the provisions of the Punjab Cinemas (Regulation) Act, 1952, it was held by the apex Court that the State Government, which is appellate authority thereunder, would not be justified in assuming jurisdiction, which has been conferred on the licensing authority under the provisions. In the said case on the applications filed for grant of licences, it is the Government, which sought to reject and therefore any such orders were held to be bad. However, in the present case there is no similar such situation arising. It is only on the clarification sought by the 2nd respondent in regard to entitlement of lease among the applications received, the only direction given by the Government was to consider that of the respondent No.4, which is strictly in terms of the aforesaid rule, where a preference has been given to the earliest application.

9. In SONA EXPORTS' case (2 supra) a Division Bench of this Court, considering the very same provisions held that the Director of Mines is the officer authorised to grant leases and therefore the officer of special duty cannot issue any such direction to the Director. In that case in pursuance of memo a direction was given to the licensing authority not to grant any leases till a policy decision is taken, which was held to be without any power under the aforesaid rules. This case stands totally apart from the present case on hand. It is not a case where any such direction has been given either omnibus or in spacie. Further, it was only in response to clarification sought having regard to doubt expressed by the 2nd respondent, which was sought to be clarified, which is well within the four corners of the law. In the circumstances, either of the decisions relied on by the petitioners are of no help to them.

10. It is the case of the respondent No.4 that it is only due to the fact that the applicant himself being a highly influential person is trying to see that the 4th respondent is put to greater hardship and denies of its legitimate rights. These are all matters, which are not required to be gone into at this stage. Having regard to the fact that the application of the respondent No.4 is prior one and further even on a perusal of the file produced on behalf of the authorities, I do not find any error in the impugned order.

11. In the circumstances, I do not find any merits in both the writ petitions. The Writ Petitions are, accordingly, dismissed. No costs.

B.PRAKASH RAO, J.

Dated 28-09-2004.

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To

1 The Secretary, Government of Andhra Pradesh, , Industries &

Commerce Department, Secretariat, Hyderabad.

2 The Director, Mines & Geology, BRKR Buildings, 8th Floor, Tank Bund

Road, Hyderabad.

3 The Assistant Director of Mines & Geology, Tekkali, Srikakulam District.

4. 2CCs to G.P. for Mines And Geology, High Court Buildings,

Hyderabad.(OUT).

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